No. 02-1080

Supreme Court, U.S.
FILED
JUL 7 2003
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

GENERAL DYNAMICS LAND SYSTEMS, INC.,
Petitioner,

v.

DENNIS CLINE, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED JANUARY 16, 2003
CERTIORARI GRANTED APRIL 21, 2003

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Amended Complaint for Declaratory Judgment and Money Damages with Jury Demand Attached, *Cline v. General Dynamics*, Case No. 99-CV-7401 (N.D. Ohio filed Sept. 7, 1999) 4

United States District Court
Northern District of Ohio (Toledo)
Case No. 99-CV-7401

Cline *et al.* v. General Dynamics Land Systems Inc.

June 24, 1999	Complaint
Sept. 29, 1999	Amended Complaint
Nov. 24, 1999	Motion by Defendants to Dismiss Plaintiff's Amended Complaint
Jan. 18, 2000	Opposition by Plaintiffs to Motion by Defendants to Dismiss Plaintiff's Amended Complaint
Feb. 7, 2000	Reply Memorandum by Defendant in Support of its Motion to Dismiss
Feb. 18, 2000	Sur-Reply by Plaintiffs to Defendant's Reply to Plaintiff's Memo Contra to Defendant's Motion to Dismiss Motion Reply
Mar. 10, 2000	Memorandum, Opinion, and Order: granting motion by defendants to dismiss plaintiffs' amended complaint
Mar. 10, 2000	Judgment
April 10, 2000	Notice of Appeal by Plaintiffs re Judgment Dismissing Case

United States Court of Appeals for the Sixth Circuit
Docket No. 00-3468
Cline v. General Dynamics

April 18, 2000	Civil Case Docketed
July 7, 2000	Proof Brief filed by E. Bruce Hadden and Mark W. Biggerman for Appellant Dennis Cline
Aug. 21, 2000	Proof Brief filed by Craig C. Martin for Appellee General Dynamics
Sept. 29, 2000	Proof Reply Brief filed by E. Bruce Hadden and Mark W. Biggerman for Appellant Dennis Cline
Oct. 6, 2000	Appendix filed by Mark W. Biggerman for Appellant Dennis Cline
Oct. 27, 2000	Final Brief filed by E. Bruce Hadden and Mark W. Biggerman for Appellant Dennis Cline
Oct. 27, 2000	Final Reply Brief filed by E. Bruce Hadden and Mark W. Biggerman for Appellant Dennis Cline
Oct. 30, 2000	Final Brief filed by Craig C. Martin for Appellee General Dynamics
Sept. 18, 2001	Cause Argued on 9/18/01
July 22, 2002	Opinion filed: Reversed and Remanded

July 22, 2002	Judgment: Reversed and Remanded
Aug. 5, 2002	Petition for en banc rehearing filed by Craig C. Martin for Appellee General Dynamics
Aug. 8, 2002	Letter sent by blh to Mark W. Biggerman for Appellant Dennis Cline notifying that party is directed to respond to a petition for en banc rehearing
Aug 22, 2002	Response to a petition for en banc rehearing filed by Mark W. Biggerman for Appellant Dennis Cline
Sept. 19, 2002	Order filed denying petition for en banc rehearing
Sept. 27, 2002	Mandate issued with no cost taxed

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO,
WESTERN DIVISION

Dennis Cline, John Alge, David Bayes, Gary Bish, Dan Brenamen, Lewis Browning, Anthony Ciminillo, Scott Danner, Hixey Deeble, Robert Dewald, Larry Dicke, Richard Dirmeyer, David Driggs, Ron Duran, Kenneth Emahiser, Donald Eversole, Earl Fast, Dennis Ferguson, Robert Feucht, William Fisher, Steven Flake, Vada Flinders, Robert Frye, Gregory Gebolys, Joseph Gibson, Robert Greenlee, Raymond Gourash, Steven Hammond, Nathan Heckathorn, David Hollon, Charles Huff, Gary Huff, Richard Huffman, Anthony King, Les Krotzer, Robert Kuhn, Gerald Lanning, David Laurence, William Legrant, Charles Lowery, Donald Mathias, Gregory Mayberry, Steven Mays, John McClellan, Danny McEowen, Stan Miller, James Munson, Vincent Napier, Robert Nye, Clayton Pitts, Dennis Powers, Eliseo Ramirez, John Rammel, James Reese, Leonard Risner, Patrick Roddy, Tom Saylor, John Schlosser, David Seibert, Marvin Shepherd, M.J. Shields,	:	Case No. 99-7401 Judge Katz Jury Demand Endorsed Hereon

Doug Sipe, David Spires, Larry Stark, Kenny Stevens, Michael Strahm, Anthony Stubbs, Russ Theil, Thomas Tucker, Charles Wagner, Harley Wagner, John Wagner, Gregory Walters, Robert Waltermyer, Charles Wood, Michael Woodruff, Allan Young, Kyle Young, Rick Young, Robert Baker, Dean Becker, Gary Salyer, Daryl Beaupre, Terry Gibbs, Jon Cottrell, Terry Biddle, John Birkmeier, Margaret Boyd, Guy Burrows, Russell Clewley, Thomas Clifton, Daniel Cline, Jed Couts, James Culp, Sandra Daniel, Michael Deal, Dana DeCamp, Richard Diltz, Steven Freed, Daniel Geething, Patric Goddard, Frank Guerrero, Alan Haunhurst, Robert Horning, Scott Hesse, Michael Hunsicker, Loren Hurless, Joanna Jacobs, Bobby Jordan, Bob Keiffer, Richard Kessler, Paul Kesner, Douglas Kraepel, Gary Lamberjack, David Luchini, Lester Lyons, Joella Marks, Jeffrey Martin, Kenneth McCaslin, Robert McDonald, Robert Millirans, Jeffrey Monroe, Joseph Myers, Steven Myers, John Nekoranec, Wayne Nestor, Paul Niese, Mike Nino, Ronald Perrine, Charles Radloff, Mark Rex, Michael Rigsby, Bruce Rose, Dennis Schimmoeller,	:	Case No. 99-7401 Judge Katz Jury Demand Endorsed Hereon

Michael Shultz, Sandy Snider, Larry Sutton, Cecil Turnbell, Ralph Wheeler, Robert White, Daniel Wilges, Robert Wilkins, Leonard Wilson, Richard Wright, Martin Zamudio, Emery Koszoru, Robert Beck, Donald Kime, David Pigga, Anthony Durkin, Richard Jackson, Thomas Kraycer, William Simson, Harry Baldan, Thomas Degrafenried, Leo Brunori, Delmar Weikel, Eugene Fisher, John Jerome, James Ferraro, Pete Borkowski, Kevin Parker, Michael Pisarski, Joseph Slakis, Boyd Smith, Vicent Cesari, Daniel Buranich, John Roszko, Gary Morcom, Stanley Homitz, Joseph Erzar, Dennis Kobierecki, John Wargo, Paul Debish, James Swartz, Peter Rosar, George Sansky, Partrick Rosemellia, Robert Clark, George Archibald, Thomas Earyes, Stanley Cominsky, JuLeann, Kurchin, James Clark, Keith Winkler, Ted Anaszeuski, John Manko, Ronald Kennedy,	:	Case No. 99-7401
and	:	Judge Katz
Thomas Babb, Roger Pool, Gary Rhodes, Ronald Mitchem, Jim Welly, David Dillon, Leonard Haaser, Ed Galan, David Puchta, Michael Lucius,	:	Jury Demand Endorsed Hereon

and	:	
Mario Diaz, Dennis Ryan, Michael Williams,	:	Case No. 99-7401
Plaintiffs,	:	Judge Katz
v.	:	Jury Demand Endorsed Hereon
GENERAL DYNAMICS LAND SYSTEMS, INC.,	:	
Defendant.	:	

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND MONEY DAMAGES WITH JURY DEMAND ATTACHED

Plaintiffs, complaining of Defendant, alleges as follows:

PARTIES

1. Plaintiffs are citizens of the United States of America and are citizens and residents of the State of Ohio. Plaintiffs, Thomas Babb, Roger Pool, Gary Rhodes, Ronald Mitchem, Jim Welly, David Dillon, Leonard Haaser, Ed Galan, David Puchta and Michael Lucius, shall hereinafter be jointly and severally referred to as :"Plaintiff Babb group." Plaintiffs, Mario Diaz, Dennis Ryan and Michael Williams, shall hereinafter be jointly and severally referred to as "Plaintiff Diaz group." All remaining Plaintiffs shall hereinafter be jointly and severally referred to as "Plaintiff Cline group."

2. Defendant General Dynamics Land Systems, Inc.

is a corporation authorized and existing under the law of the State of Delaware with its principal place of business in Sterling Heights, Michigan.

JURISDICTION AND VENUE

3. This action arises under Section 7 of the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 626, and Section 16(b) of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 216(b), 42 U.S.C. § 2000e-5 and Ohio Revised Code Chapter 4112.

4. Jurisdiction over Counts 1 and 3 of this action is conferred on this Court by § 7 of the ADEA, 29 U.S.C. § 626 and 28 U.S.C. § 1331 because the action arises under the laws of the United States.

5. Jurisdiction under Count 2 of this action is founded upon pendent jurisdiction and diversity of citizenship under 28 U.S.C. § 1332 in that the action is between citizens of different states and the amount of controversy exceeds the sum of $75,000, exclusive of interests and costs.

6. Venue is properly laid in the Northern District of Ohio, Western Division, because Defendant is doing business in Allen County, Ohio, and the claims alleged herein arose in Allen County, Ohio.

FACTUAL ALLEGATIONS

7. Plaintiff Cline group are current employees of Defendant.

8. Plaintiff Babb group and Plaintiff Diaz group are

former employees of Defendant.

9. Plaintiffs are current or former members of the United Auto Workers Union (UAW).

10. At all time relevant and material herein, Plaintiffs were employees of Defendant within the meaning of the ADEA.

11. At all times relevant and material herein, Plaintiffs were employees of Defendant within the meaning of Ohio Revised Code Chapter 4112.

12. At all times relevant and material herein, Defendant was an employer within the meaning of the ADEA.

13. At all time relevant and material herein, Defendant was an employer within the meaning of Ohio Revised Code Chapter 4112.

14. Prior to July 1, 1997, Plaintiffs were subject to and affected by a Collective Bargaining Agreement (CBA1) between Defendant and the UAW.

15. During the duration of CBA1, the UAW and Defendant entered into a subsequent collective bargaining agreement (CBA2) which became effective upon the expiration of CBA1 on July 1, 1997.

16. CBA2 is currently in effect.

17. Plaintiffs are 40 years of age or older and were less the 50 years of age on July 1, 1997.

18. CBA2 imposed a limit on the level of benefits provided to Plaintiff on the basis of their age.

19. The CBA's restrictions resulted in a discriminatory impact on Plaintiffs.

20. Defendant's conduct resulted in a discriminatory impact on Plaintiffs.

21. As a result of the imposed limits on their benefits, Plaintiff Babb group retired from employment with Defendant prior to CBA2's effective date to preserve their benefits and prevent losing said benefits guaranteed under CBA1.

22. Plaintiff Diaz group retired from employment with Defendant after CBA2's effective date. Upon their retirement, Plaintiff Diaz group received less benefits than if they had retired under CBA1.

23. Plaintiff Cline group are currently employed by Defendant and subject to CBA2's limit on their level of retirement benefits on the basis of their age.

24. Plaintiff Dennis Cline initiated charges on behalf of Plaintiffs with the United Sates Equal Opportunity Employment Commission (EEOC), alleging that CBA2 discriminated against Plaintiffs on the basis of their age. The EEOC assigned these charges numbers 220971198 and 220971199.

25. On June 30, 1998, the EEOC issued a determination that CBA2 adversely affects Plaintiffs "by imposing a limitation on the level of benefits provided to them on the basis of their age." (See attached Exhibit 1).

COUNT 1: AGE DISCRIMINATION (ADEA)

26. Plaintiffs incorporate the preceding paragraphs.

27. Defendant's conduct constitutes a violation of the ADEA, including, but not limited to, violation of 29 U.S.C. §§ 206-207.

28. As a result of the foregoing unlawful conduct on the part of Defendant, each member of the Plaintiff Babb group suffered and continues to suffer lost wages and additional damages in excess of $75,000 exclusive of interest and costs.

29. As a result of the foregoing unlawful conduct on the part of Defendant, each member of the Plaintiff Diaz group suffered and will continue to suffer damages as a result of lost benefits in excess of $75,000 exclusive of interest and costs.

30. As a result of the foregoing unlawful conduct on the part of Defendant, each member of the Plaintiff Cline group suffered and will continue to suffer damages as a result of lost benefits in the amount to be determined at trial.

COUNT 2: AGE DISCRIMINATION (OHIO REVISED CODE CHAPTER 4112)

31. Plaintiff incorporate the preceding paragraphs.

32. Defendant's conduct constitutes a violation of Ohio Revised Code Section 4112.99.

33. As a result of the foregoing unlawful conduct on the part of Defendant, each member of the Plaintiff Babb group

suffered and continues to suffer lost wages and additional damages in excess of $75,000 exclusive of interest and costs.

34. As a result of the foregoing unlawful conduct on the part of Defendant, each member of the Plaintiff Diaz group suffered and will continue to suffer damages as a result of lost benefits in excess of $75,000 exclusive of interest and costs.

35. As a result of the foregoing unlawful conduct on the part of Defendant, each member of the Plaintiff Cline group suffered and will continue to suffer damages as a result of lost benefits in an amount to be determined at trial.

COUNT 3: DECLARATORY JUDGMENT

36. Plaintiffs incorporate the preceding paragraphs.

37. There exists a justiciable controversy between Plaintiffs and Defendant concerning Plaintiffs' rights and Defendant's responsibilities under CBA2.

38. Plaintiff Cline group has standing to bring this action against Defendant.

39. In the alternative, if this Court determines Plaintiff Cline group does not have standing to bring this action against Defendant at this time, this Court should determine if and when Plaintiff Cline group will have standing to bring this action against Defendant.

40. Plaintiff Cline group's claims in this action are ripe for determination by this Court.

41. In the alternative, if this Court determines Plaintiff

Cline group's claims in this action are not ripe for determination by this Court at this time, this Court should determine if and when Plaintiff Cline group's claims in this action will be ripe for determination by this Court.

WHEREFORE, Plaintiff demand that this Court:

1. Adjudge and declare the rights and responsibilities of the parties.

2. Declare and determine:

A. The CBA is in conflict with and violates Plaintiffs' rights as protected by and prescribed by federal and state law;

B. Plaintiffs have been damaged.

C. Plaintiffs are entitled to compensation for all back pay and benefits due as a result of Defendant's wrongful action.

D. Defendant willfully violated the federal and state law.

E. There has arisen among and between the parties a justiciable controversy concerning the rights and responsibilities of the parties under the CBA.

3. Award Plaintiff Babb group compensatory damages in excess of $75,000 exclusive of interest and costs.

4. Award Plaintiff Diaz group compensatory damages in excess of $75,000 exclusive of interest and costs.

5. Award Plaintiff Cline group compensatory damages in an amount to be determined at trial.

6. Issue preliminary and permanent injunctions precluding Defendant's continuation of Defendant's discriminatory conduct.

7. Grant such other and further relief to which Plaintiffs may be entitled against the Defendant in either law or equity including their costs and attorneys fees incurred herein.

JURY DEMAND

Plaintiffs hereby request a jury in this matter.

Respectfully submitted,

/s/ Mark W. Biggerman
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Trial Attorney for Plaintiffs

/s/ E. Bruce Hadden
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(614) 436-4500 (fax)
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

A true a copy of the foregoing Amended Complaint was served on the parties listed below by regular mail on Monday, September 7, 1999.

/s/ Mark W. Biggerman
Mark W. Biggerman

Rolf H. Scheidel (0023954)
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Toledo, Ohio 43624-1573
Attorney for Defendant

Exhibit 1

U.S. Equal Employment Opportunity Commission
Cleveland District Office

Charge No.: 220971199

U.A.W. Local 2075
1440 Bellefontaine Avenue
Lima, Ohio 45804 Respondent

DETERMINATION

I issue the following findings with respect to the Respondent's compliance with the Age Discrimination in Employment Act of 1967 (ADEA), as amended. Respondent is a labor organization subject to the ADEA.

The Commission has completed an investigation of the Respondent to determine its compliance with the ADEA. In particular, the Commission investigated the Respondent's changes to the health benefits upon retirement.

Examination of the evidence establishes that Respondent's Collective Bargaining Agreement provides that employees who had not reached fifty years of age by July 1, 1997 would not be entitled to the same medical benefits upon retirement as those employees who attained fifty years of age by that same date. This provision adversely affects those employees in the protected age group between the ages of 40 through 49 by imposing a limitation on the level of benefits provided to them on the basis of their age. Based on the foregoing, I have determined that the evidence obtained during the investigation

establishes a violation of the ADEA.

Upon finding that there is reason to believe that violations have occurred, the Commission attempts to eliminate the alleged unlawful practices by informal methods of conciliation. Therefore, the Commission now invites the Respondent to join with it in reaching a just resolution of this matter. The confidentiality provisions and Commission Regulations apply to information obtained during conciliation.

Charge No.: 220970827

If the Respondent declines to discuss settlement or when, for any other reason, a settlement acceptable to the office Director is not obtained, the Director will inform the Respondent and advise them of the court enforcement alternatives available to the Commission.

On Behalf of the Commission:

June 30, 1998 /s/ Dorothy J. Porter
Date Dorothy J. Porter
District Director